

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

MARTIN L. HUBBARD,

Plaintiff,

vs.

CIVIL NO. 5:09-cv-175 (GTS/GHL)

DUKE CAIN CONTRACTING, INC.,

Defendant.

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Appearances:

Of Counsel:

For Plaintiff:

Byrne, Costello Law Firm  
AXA Tower I  
100 Madison Street  
Suite 1600  
Syracuse, New York 13202

Jordan R. Pavlus, Esq.

For Defendant:

Menter, Rudin Law Firm  
308 Maltbie Street  
Suite 200  
Syracuse, NY 13204-1498

Julian B. Modesti, Esq.

Glenn T. Suddaby, U.S. District Judge

**JUDGMENT DISMISSING ACTION BY REASON OF SETTLEMENT**

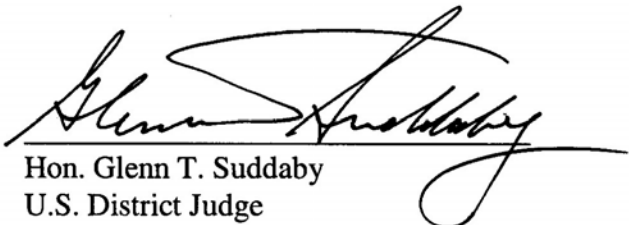
The Court having been advised by counsel on 9/23/09 that the parties in this action have entered into an agreement in settlement of all claims in this action, and that they reasonably anticipate finalizing their agreement shortly, following which this action will be discontinued, with prejudice, by stipulation pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure. Counsel has also advised that no infant or incompetent is a party to this action. Based upon this development, I find that it is not necessary for this action to remain

on the calendar of the Court. It is therefore hereby

**ORDERED** that this action is **DISMISSED** in its entirety **without prejudice** pursuant to the procedure as set forth in L.R. 68.2(a) of the Local Rules of this court. This judgment is issued without prejudice to the right of the parties to secure reinstatement of the case within thirty (30) days after the date of this judgment by making a showing that the settlement was not, in fact, consummated; and in the event that no request is made for reinstatement within thirty (30) days of the date of this judgment, the dismissal of this case shall thereafter be **with prejudice**; and it is further

**ORDERED** that the Clerk shall serve copies of this Judgment upon the attorneys for the parties appearing in this action.

Dated: October 26, 2009  
Syracuse, New York



Hon. Glenn T. Suddaby  
U.S. District Judge